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November 18, 2004

**BY HAND DELIVERY**

Mr. Lawrence H. Norton  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: MUR 5540**

Dear Mr. Norton:

On behalf of Kerry-Edwards 2004, Inc. and Robert A. Farmer as Treasurer ("Respondents"), this letter is submitted in response to the complaint filed by Center for Individual Freedom ("the Complaint") and subsequently labeled MUR no. 5540. The Complaint alleges that CBS Broadcasting, Inc. coordinated with Respondents to air a television program that reported the discovery of documents that allegedly concerned President Bush's service in the Texas Air National Guard. Because the Complaint does not describe a violation of law, the Complaint should be dismissed and the file should be closed.

The Complaint argues that the CBS program was an "electioneering communication," and therefore an in-kind contribution to Kerry-Edwards 2004, Inc. However, the facts in the Complaint describe a news program exempted from the definition of both "electioneering communication" and "expenditure." This Complaint does not contain "facts which describe a violation of a statute or regulation." 11 C.F.R. § 111.4(d)(3) (2004).

The CBS program described fits squarely within the exception for "a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station." 2 U.S.C. § 434(f)(3)(B)(i) (2004); *see also* 11 C.F.R. § 100.29(c)(2). Similarly, news stories are also excepted from the definition of "expenditure." *See* 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.132.

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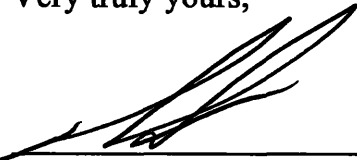
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The Complaint argues that the CBS story does not meet the requirements of the news story exception because it "lacked all the requirements of responsible journalism." Complaint at p. 10. That claim, even if true, is inapposite. First Amendment protection of the press extends even to erroneous news reporting. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Because the Complaint does not allege a violation of federal election law, Respondents respectfully request that the Commission dismiss the Complaint.

Very truly yours,



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Marc E. Elias  
Counsel to Kerry-Edwards 2004, Inc.  
Robert Farmer, Treasurer

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